IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITON NO. 109/2005**

Miss Ayesha Analiza Pereira,
major, resident of House No.405,
Villa Avada, Cruz Nagar, Navelim, Goa. ..... Petitioner.

V/s.

1. Goa University,
through its Registrar,
Bambolim Plateu, Bambolim, Goa.

2. Carmel College for Women,
through its Principal,
Nuvem, Goa. ..... Respondents.

Mr. S.G. Bhobe, Advocate for the petitioner.

Mrs. A.A. Agni, Advocate for respondent No.1.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : 14th March, 2005.

O R A L O R D E R : (Per LAVANDE, J.)

The petitioner, who is doing her third year Bachelor of Arts at Carmel College for Women, Nuvem, Goa, seeks writ of mandamus or any other appropriate writ, direction, order, directing the respondents to permit the petitioner to appear and answer the examination for the third

year integrated degree course in Bachelor of Arts which was scheduled to be held on 8.2.2005. The petitioner passed her second year Bachelor Course from Smt. Parvatibai Chowgule Cultural Foundations College of Arts and Science, at Margao in April, 2004 and for the academic year 2004-05, sought admission in Carmel College for Women- respondent No.2 for the third year. According to the petitioner, she was affected with viral fever and was under treatment from 9.8.2004 till 24.8.2004. Thereafter, she was suffering from Hepatitis and was under treatment for the said deceased from 29.8.2004 to 31.10.2004. During the said period, the petitioner also met with an accident. According to the petitioner, the petitioner attended classes from 19.11.2004 and at the time of resuming, she submitted medical certificates to the Principal of the College, justifying her absence. According to the petitioner, the certificates were returned to the petitioner and she was informed that it was not necessary to submit the said certificates. According to the petitioner, the College reopened on 3.1.2005 for regular classes and the petitioner started attending and on 5.1.2005, she filled up the form to answer third year B.A. Examination and paid the examination fees of Rs.955/- . On 4.2.2005, the petitioner received a letter from respondent No.2 dated 31.1.2005 informing the petitioner that she had not been allowed to file her examination form for B.A. examination to be held in April, 2005 due to insufficient attendance and accordingly she was asked to collect the fees paid by her from the College. Thereafter, the

petitioner sent communication to the Vice-Chancellor and also approached the Office of respondent No.1. The petitioner also addressed communication dated 23.2.2005 to His Excellency, Governor of Goa. According to the petitioner, since no action was being taken by the respondents, the petitioner filed the present petition on 7.3.2005 seeking the relief mentioned above.

2. Mr. Bhobe, learned Counsel appearing for the petitioner submitted that the respondents are not entitled not to permit the petitioner to appear and answer the examination scheduled in April, 2005. According to the learned Counsel, the College Prospectus only mentions that the student has to be regular and at no point of time the petitioner was informed as to what is the minimum attendance required in order to be eligible to appear for the final examination. According to the learned Counsel, the action of the respondents in not permitting the petitioner to appear for the examination is arbitrary and illegal. The learned Counsel further submitted that the respondent No.2 having condoned absence of the petitioner, the action of respondent No.2 in not permitting the petitioner to appear for the examination is arbitrary and illegal.

3. We have considered the submissions made by the learned Counsel appearing for the petitioner. The learned Counsel for the

petitioner has not been able to point out the breach of any Rule or Regulation by the respondents. The petitioner has neither been able to point out any statement in the petition nor produced the prospectus so as to enable us to find out if the respondents have acted contrary to the clauses in the prospectus. Similarly, neither from the statements in the petition nor during the course of arguments, the learned Counsel for the petitioner was in a position to make a categorical statement as to what is the requirement of percentage of attendance of classes for being eligible to answer the examination. We are, therefore, unable to accept the submission made by the learned Counsel for the petitioner that the action of the respondents is arbitrary or illegal. It was for the petitioner to plead the facts and point out any rule or regulation or any clause in the prospectus which, according to the petitioner, has been breached by the respondents in order to entitle the petitioner for any relief from this Court by invoking Article 226 of the Constitution of India. The petition clearly discloses that the petitioner could not attend the classes for considerable length of time, may be on account of the fact that she was suffering from viral fever and hepatitis. Nevertheless, the fact remains that the petitioner was absent for considerable length of time and, therefore, if respondent No.2 has not permitted the petitioner to appear for the examination to be held in April, 2005 due to insufficient attendance, by no stretch of imagination it can be said that the action of respondent No.2 is arbitrary or illegal. We do not find any merit in any of

the submissions made by the learned Counsel for the petitioner.

4. We do not find any merit in the present petition and, therefore, the same is summarily rejected.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm